

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19680 of 2001

Dated:23.08.2007

Between:

V.K.Kulkarni, S/o.Sri Kasinath Kulkarni,
and others.

...Petitioners

and

Commissioner, Appeals,
O/o.The Chief Commissioner of Land Administration-AP,
Hyderabad,
And anothers.

...Respondents

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WRIT PETITION No.19680 of 2001

ORDER:

This Writ Petition is filed against the order of the first respondent dated 30.03.2001 whereby and whereunder the appeal filed by the petitioners under Section 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), was dismissed. The petitioners seek a writ of mandamus invalidating the same.

It is the case of the petitioners that all of them purchased small extents of house sites/vacant land with houses assessed by Municipal Corporation of Hyderabad about three and half decades prior to filing of the Writ Petition. The second respondent served a notice under Section 10(5) of the Act requiring them to vacate the vacant land in possession of each of the petitioners. Aggrieved by such notice, all of them filed appeal before the first respondent, *inter alia*, contending that their vendor, Pasham Balaiah, S/o.Papaiah, sold the land which does not form part of the surplus land, and that the sale is deemed to have been ratified by Section 26 of the Act. These two contentions did not find favour with the first respondent.

In this Writ Petition, learned Counsel for the petitioners reiterates the submissions and contentions, which were raised before the first respondent. **Opposing** the Writ Petition the learned Special Government Pleader for Urban Land Ceiling submits that when the final statement and final orders under Section 8(4) of the Act read with Section 9 of the Act are not specifically assailed under Section 33 of the Act, an appeal against notice under Section 10(5) itself is not maintainable. He placed reliance on a recent judgment of the Supreme Court in **Pune Municipal Corporation v. State of Maharashtra**^[1] in support of his contention.

A perusal of the impugned order reveals that Pasham Balaiah filed a declaration, being CC No.B/8332/76, dated 02.01.1996, declaring an extent of 5072 square metres as well as 142 square metres forming part of a house. The second respondent issued a draft statement on 11.02.1993 declaring an extent of 5072 square metres as surplus vacant land, out of which, an extent of 1000 square metres was allowed, and a final statement was subsequently issued under Section 8(4) of the Act on 29.07.1994. After issuing necessary notifications and notices under Sections 10(1) and 10(3) of the Act, it was found that several structures have come up on the surplus vacant land admeasuring 4072 square metres. Therefore, notices were served on all the occupants of the houses under Section 10(5) of the Act. As noticed earlier, it was the main contention of all the petitioners that they purchased plots long ago and that they issued notices to the second respondent under Section 26 of the Act whereafter option was not exercised, and therefore, they cannot be evicted. The appellate authority observed that the petitioners did not file any permission purported to have been obtained under Section 26 of the Act, and came to the conclusion that the alienations of the land are void under Section 5(2) of the Act.

Though a specific plea was not adverted to as to whether an appeal would lie against a notice under Section 10(5) of the Act, this Court cannot ignore the law declared by the Supreme Court. Section 33 of the Act provides for an appeal against an order made by the competent authority under the Act. This is interpreted as to mean in the order passed by the competent authority, be it under Sections 8(4), 10(1), 10(3), 10(5) or 10(6) of the Act, when a person who is subsequent purchaser after coming into force of the Act, seeks to

challenge the notice issued under Section 10(5) or 10(6) of the Act, an appeal would not certainly lie as long as the order passed under Section 8(4) of the Act remains intact. This aspect of the matter was considered by the Supreme Court in **Pune Municipal Corporation** (supra), as below.

...So far as the order passed under Section 8 of the Act is concerned, it was never challenged by the land owners in the appeal. An appeal which was filed by the land owners in 1979 was an appeal against an order passed under Section 10(3) of the Act. The Appellate Authority, therefore, rightly held such appeal to be not maintainable. If the land owners were aggrieved by the order passed under Section 8 of the Act, either they should have challenged the order before the Appellate Authority or before the Revisional Authority. The Land owners did neither. The order, therefore, became final. More than a decade had passed thereafter. In 1990, land owners, through one Power of Attorney (Shaikh Issaqua Shaikh Gafoor) approached Revisional Authority under Section 34 of the Act by filing an appeal (revision) which was dismissed on the ground of maintainability. Again, the said order had not been challenged...

As the original declarant or the petitioners herein did not specifically challenge the order of the second respondent dated 29.07.1994 under Section 8(4) of the Act, the appeal itself is not maintainable.

The Writ Petition is devoid of merits, and the same is accordingly dismissed. No costs.

(V.V.S.RAO, J)

23.08.2007

vs

[\[1\]](#) JT 2007 (4) SC 87